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Analysis of Enrolled Senate Bills 826-7

Topic: Builders
Sponsor: Senators Basham and Leland
Co-Sponsors: Senators Clarke, Jacobs, Scott, Olshove, Clark-Coleman, Cherry, Emerson, and Brater
Committee: Senate Economic Development, Small Business, and Regulatory Reform
House Regulatory Reform

Date Introduced: October 19, 2005

Date Enrolled: December 15, 2006

Date of Analysis: December 18, 2006

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: Buying a home is the largest single investment that most people will ever make. Michigan law requires residential builders to be licensed. The Michigan Department of Labor & Economic Growth regularly advises consumers to exercise caution in selecting a builder. Advice includes talking to friends, neighbors, and co-workers who have had good experiences, asking a prospective builder for a copy of his or her license and references, obtaining estimates, and entering into a strong contract. Despite the requirements of Michigan law and the advice of the department, Better Business bureaus, and others; Michigan citizens are still taken advantage of by unscrupulous contractors.

A Detroit television reporter's expose of unlicensed contractors preying on Detroit homeowners resulted in the creation of a bi-partisan task force in the Senate to consider ways to strengthen Michigan laws and protect consumers. The task force met for several months before making its recommendations. In addition to proposals to amend the Occupational Code and related statutes, several members requested and received permission from the Department of Labor & Economic Growth to republish information distributed by the department on choosing a builder or remodeler.

Description of Bill: Senate Bill 826 amends several sections of the Occupational Code. The penalties for unlicensed activity in Section 601 are substantially increased. A person whose license or registration is suspended, revoked, or lapsed is considered to be unlicensed or unregistered. The bill creates a three-tiered schedule of penalties for unlicensed practice as a builder. Potential jail time would increase from a maximum of 1 year in jail for a first offense to a maximum of 4 years for third and subsequent offenses. Fines would be set at a minimum of \$5,000 and a maximum of \$25,000. For third and subsequent offenses, a violation would be classified as a felony. Restitution is required for any violation of the act. The department,

Attorney General, county prosecutor, and an attorney representing a local unit of government may utilize forfeiture as a remedy. The forfeiture provisions appear to apply to all professions. A court entering a conviction related to a violation of Section 601 is required to notify the Bureau of Commercial Services.

Section 602 is amended to clarify that restitution be based upon proofs submitted to, and the finding made by, the trier of fact and as provided by law.

Aiding and abetting unlicensed activity is added to Section 604 as a prohibited activity subject to penalties of the act.

Amendments to Section 605 include the listing of mediation or other alternative dispute resolution. The authority of the department related to civil, criminal, or administrative enforcement action is clarified, and the department is declared to have standing to bring action in court regarding unlicensed practice of an occupation.

Section 606 is a new section containing the reference to forfeiture and Chapter 47 of the Revised Judicature Act.

Other provisions in the bill amend Article 24 of the Code, which applies to residential builders and maintenance and alteration contractors. A qualifying officer is required to obtain a license as an individual. An individual who is also a qualifying officer would have his or her name and license number listed on any license issued to the individual as a qualifying officer. In any case where the licensee or respondent fails to appear, participate, or defend, the bill requires granting the relief requested by default. An individual or qualifying officer is prohibited from imposing a lien on real property unless he or she was licensed at the time of the performance of the act or contract.

Senate Bill 827 amends the Revised Judicature Act to require the court to notify the Bureau of Commercial Services of the entry of a judgment against a licensee on the basis of a violation of Section 2411 (2) of the Occupational Code. The court would also be required to send a copy of the judgment. A violation of Section 601 would be included in the list of crimes under the act.

The bills are tie-barred to each other and to Senate Bills 631-2.

Summary of Arguments

Pro: It is shameful how unscrupulous contractors take advantage of some of Michigan's citizens. They often prey on senior citizens and low-income families. Their shoddy work is often left unfinished before the contractor vanishes with the homeowner's money. These bills would deal constructively with this problem by creating meaningful penalties for practicing as a residential builder without a license. The proposed penalties would make investigation and prosecution of unlicensed activity much more appealing to law enforcement agencies than the minimal fine provided by current law.

Con: Although the fines and potential jail time are substantially increased in the bill, a first and second violation would still be classified as a misdemeanor. It is unlikely that local prosecutors will opt to prosecute very many such cases in preference to the murders, drugs, and other serious felonies that occur.

Fiscal/Economic Impact

(a) Department

Budgetary: The bills will have no direct budgetary impact on the department.

Revenue: The bills will not have a direct impact on department revenue.

Comments:

(b) State

Budgetary: The bills will have no direct budgetary impact on the state.

Revenue: The bills may result in an increase in fines assessed to unlicensed builders.

Comments:

(c) Local Government

Comments: The increased penalties in the bill and particularly the forfeiture provisions should help increase the interest of local prosecutors in unlicensed builder cases.

Other State Departments: The Department of Attorney General has an interest in this bill.

Any Other Pertinent Information: Some of the provisions in Senate Bill 826 are also incorporated in Senate Bill 632. When Senate Bills 826-7 and 631-2 were reported out of Senate committee a fifth bill, Senate Bill 1273 was included in the package. This bill requires the Department of Labor & Economic Growth to publish certain consumer information on choosing a builder and building a home. This bill is not tie-barred to the rest of the package.

These bills were discharged from the House Regulatory Reform Committee on Tuesday, December 13. A committee meeting was posted during the last week of session in September, but the meeting recessed at the call of the Chair while discussions regarding an additional tie bar to a carpenter regulation bill occurred. Ultimately, there was no agreement on the carpenter regulation bill, and the committee never actually convened to take testimony on the bills.

Administrative Rules Impact: Revised administrative rules may be needed.

